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August 4, 2020

VIA ELECTRONIC COMMENT FILING SYSTEM

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of *Ex Parte* Meeting
GN Docket Nos. 18-122, 20-173

Dear Ms. Dortch:

On July 31, 2020, representatives of Intelsat License LLC ("Intelsat") met telephonically with Anna Gentry, Nellie Foosaner, Susan Mort, Matthew Pearl, Paul Powell, and Donald Stockdale of the Wireless Telecommunications Bureau ("WTB"), Jose Alburqueque and Robert Nelson of the International Bureau, and Patrick DeGraba of Office of Economic Analysis to provide additional context on the significance of Restoration services to Intelsat's customers' ability to receive "same or better" service – including service continuity protection – post-transition as required by the Federal Communications Commission's ("Commission") Report and Order.[1] The meeting also covered the methodology for determining the incremental cost of any non-C-band functionality to ensure those costs are paid for by the satellite operator.[2]

Representing Intelsat on the call were Michelle Bryan, Secretary of Intelsat License LLC and Executive Vice President, General Counsel and Chief Administrative Officer of Intelsat US

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[1] *See* Expanding Flexible Use of the 3.7 to 4.2 GHz Band, *Report and Order & Order of Proposed Modification*, 35 FCC Rcd. 2343 (2020) [hereinafter "Report and Order"].

[2] *See* Wireless Telecommunications Bureau Releases Final Cost Category Schedule for 3.7-4.2 GHz Band Relocation Expenses and Announces Process and Deadline for Lump Sum Election, *Public Notice*, GN Docket Nos. 18-122, 20-205, DA 20-802, para. 14, n.57 (July 30, 2020), https://ecfsapi.fcc.gov/file/07302324113729/DA-20-802A1.pdf ("We decline to adopt Eutelsat's proposal that we establish in the Cost Catalog that reimbursements are limited to C-band only satellites, and accordingly, 'hybrid satellites' (i.e., satellites that include non-C-band transponders) should not be permitted as part of the transition. To the extent satellite operators' Transition Plans include satellites with non-C-band transponders, we would expect that such satellite operators would 'reasonably allocate the incremental costs of' any functionalities 'that are not needed to facilitate the swift transition of the band' to themselves and 'only seek reimbursement for the costs reasonably allocated to the needed relocation.").

LLC, as well as Susan Crandall, Associate General Counsel; Michael DeMarco, Executive Vice President and Chief Services Officer; Bruno Fromont, Senior Vice President Strategy and Asset Management; Tom McNamara, Vice President of C-Band Transition Management; and Kurt Riegelman, Senior Commercial Advisor – all of Intelsat US LLC – and the undersigned outside counsel. Intelsat was also joined on the call by Paroma Sanyal, Senior Consultant at the Brattle Group.

I. "Comparable Facilities" for Transitioning Satellite Operators

While the Commission has specified that the C-band transition is to proceed using the *Emerging Technologies* framework for determining what transition costs are to be covered by new market entrants, it is the case that C-band is the first time the Commission is applying this framework to a satellite spectrum transition -- a transition that must move on a very accelerated timetable in order to be successful in reaching the Commission's stated goals. However, the Commission's overall baseline remains the same; judging comparability of facilities for reimbursement is a fact specific review of what facilities the incumbent has and the services that they provide pre-transition, compared to the facilities and the services that can be provided post-transition from the perspective of the incumbent licensee's end user customer.[3]

The Commission defines "comparable facilities" in the C-band transition, and consistently in other spectrum relocation proceedings, as "facilities possessing certain characteristics in terms of throughput, reliability, and operating costs as compared to the incumbent's existing facilities" so that incumbents can "continue to provide existing services."[4] Incumbent licensees in the 800 MHz transition were entitled to employ "reasonable means . . . to maintain 'continuity of service' during the transition," including "necessary and reasonable steps to protect [the incumbent] licensees from disruption of service during the transition, and to take swift remedial action if any disruption occurs."[5] Because many incumbent licensees undergoing those relocations in the 800 MHz band were public safety licensees that could not tolerate their end users experiencing significant service outages or system downtime, ability to avoid and remedy service disruption became a significant aspect of service continuity. This factor is similarly highly significant in the C-band transition, as the Report and Order requires that satellite operators "ensur[e] that [their] customers and incumbent earth station operators are

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[3] *See* Improving Public Safety Communications in the 800 MHz Band, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd. 25120, para. 201 (2004).

[4] 47 C.F.R. § 101.101(2); Report and Order, para. 239, 326, n.729; *see also See* 47 C.F.R. § 90.699(d) (also key to any Commission finding of comparability was that the end user retained the ability to access all facilities and equivalent channel capacity (including the same number of channels with the same bandwidth that is currently available to the end user)); Report and Order, para. 184, 186, n.496, para. 188, n.499, para. 190, para. 208, n.561.

[5] Port Authority of New York and New Jersey and Nextel Communications, Inc., *Mem. Opinion & Order*, 27 FCC Rcd. 1888, para. 64 (2012); County of Charles, Maryland, *Mem. Opinion & Order*, 27 FCC Rcd. 11476, para. 24 (2012); County of Henry, Georgia and Sprint Nextel Corporation, *Mem. Opinion & Order*, 25 FCC Rcd. 10962, para. 10 (2010); *see also* Mississippi State University, *Order Reopening the Record*, 27 FCC Rcd. 8351, para. 3 (2012); County of Genesee, New York, *Mem. Opinion & Order*, 26 FCC Rcd. 12772, para. 3 (2011); Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *Mem. Opinion and Order*, 9 FCC Rcd. 1943, para. 41 (1994).

adequately transitioned and able to continue operations *without interruption*."[6] In the course of overseeing 800 MHz rebanding, the Commission reviewed a number of specific cases that were brought before the Public Safety and Homeland Security Bureau ("PSHSB") for *de novo* review where the issue presented was whether a particular requested relocation cost, if denied, would limit the incumbent's ability to maintain comparable facilities. In these cases, the Commission measured "comparable facilities" not by requiring that the incumbent licensee receive the absolute same facilities post-transition, but instead by assessing whether the incumbent would receive equivalent *functionality post-transition from its end user's point of view.*

In this situation, Intelsat's end users – the Content Companies – currently "depend on the services of satellite operators for reliable distribution of the nation's most popular programming to more than 100 million American television households," which include "support and restoration services" that "ensure the uninterrupted distribution of programmers' signals."[7] Because "any failure of a transponder or other in-orbit anomaly would leave the customers without transmission ability and would constitute an unacceptable risk to their businesses," the Content Companies provided information on the record showing that the Restoration services that Intelsat plans to provide through its Galaxy 12R replacement satellite post-transition are critical to provide the same level of signal reliability that they currently receive.[8]

The Commission in several disputed 800 MHz rebanding cases on *de novo* review determined that incumbent licensees should continue to have, and to be compensated for, the costs to reband redundant systems or functionalities if that is what they had prior to rebanding their particular 800 MHz system. One example of this is the City of Alexandria, Virginia, whose fire department used a particular type of functionality known as "zone doubling" that allowed it to have some communications service redundancy in its fleet of fire trucks that enhanced the capability of various end users to talk to one another at the scene of a fire.[9] In that case, the PSHSB determined that maintaining zone doubling would be reimbursable when the incumbent licensee had demonstrated that in its absence could lead to a loss of interoperability among properly functioning end user fire department and emergency services mobiles and portables in a specifically identified emergency situation.[10] In other words, Sprint was required to pay the City of Alexandria more to reband its fleet to maintain this redundancy because Alexandria had the redundant capability already and a failure to maintain it would result in a lack of comparability. Thus, Commission comparability precedent confirms that redundant or restoration services can be reimbursable costs if they are currently provided and the failure to replicate them would fail to meet the requirement of providing comparable facilities from the perspective of end users.

In the matter of County of Tazewell, Illinois, the PSHSB examined Sprint's obligation to provide comparable services in relation to 262 mobile radios that were licensed to operate on five NPSPAC mutual aid channels and were "also technically capable of operation on all

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[6] Report and Order, para. 32 (emphasis added).

[7] Content Companies *Ex Parte* Letter, 1 (July 31, 2020), https://ecfsapi.fcc.gov/file/10731110742419/Content%20Companies%20C-band%20Restoration%20Services%20Ex%20Parte%20Letter%20(07.31.20).pdf.

[8] *Id.* at 2.

[9] *See* City of Alexandria, Virginia and Sprint Nextel Corporation, *Mem. Opinion & Order*, 25 FCC Rcd. 2849, para. 13, n. 30, 17 (2010).

[10] *See id.*

channels in the current NPSPAC band, including non-mutual aid channels."[11] The PSHSB "conclude[d] that to meet the comparable facilities standard with respect to [these] radios, Sprint must provide radios that have the same technical capability as the [c]ounty's current radios, *i.e.*, they must be capable of trunked operation on mutual aid channels in the new NPSPAC band" even though "the [c]ounty [was] not licensed to use its existing radios to their full operational capacity."[12] In other words, comparability measures capability, and is not strictly limited to actual use. The PSHSB's determination meant that Sprint was required to pay a half a million dollars more than it otherwise would have to replace these 262 police radios so that the police did not lose the capability if they wished to expand channel capacity to use these radios on other channels in the future. Significantly, the PSHSB affirmed the view that comparable facilities review must take into consideration both technological and operational capabilities and could not be limited simply to looking at the number of channels available for use by the incumbent licensee before and after.[13]

Similarly, in the broadcast incentive auction setting, the Commission noted that, while the comparable facilities standard does not intend to reimburse "new, optional features in equipment," an exception would be such optional features that are "already present in the equipment that is being replaced."[14] It also recognized that for broadcast stations that "currently have licensed auxiliary facilities or own backup equipment," the associated relocation expense for these would be deemed eligible for reimbursement.[15]

Intelsat intends to use Galaxy 12R for Restoration services. As described in its Transition Plan, Intelsat must densify and repurpose the use of its current Galaxy 23 satellite from Restoration service to Distribution service. As a result, Galaxy 12R is required to take on that Restoration function. And because Restoration service is a contracted-for service -- just as are Distribution and Contribution services -- Galaxy 12R is eligible for reimbursement as a comparable facility under Commission precedent as summarized above.

These precedents entirely undercut the arguments of those entities seeking to disqualify Galaxy 12R as "unnecessary" for Intelsat's customers to enjoy comparable capabilities. As other recent filings with the Commission have noted, customers require that they have near real time backup capacity, should a satellite or a transponder materially degrade or fail.[16] Without having

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[11] County of Tazewell, Illinois and Sprint Nextel, *Mem. Opinion & Order*, 22 FCC Rcd. 8675, para. 3 (2007).

[12] *Id.*, paras. 8, 10.

[13] *See Id.*, paras. 9, 11.

[14] Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Report and Order*, 29 FCC Rcd. 6567, para. 624 (2014).

[15] *Id.*; *see also* Incentive Auction Task Force and Media Bureau Finalize Catalog of Reimbursement Expenses, *Public Notice*, 32 FCC Rcd. 1199, para. 3, n.13 (2017) ("[T]o the extent that stations reasonably incur" expenses for new backup generators, "they can be claimed within the appropriate cost categories or on the catch-all 'Other' line in the Reimbursement Form.").

[16] *See* Intelsat License LLC Notice of *Ex Parte* Meeting (July 27, 2020), https://ecfsapi.fcc.gov/file/107272764023619/Ex%20Parte%20Meeting%20with%20Chairman%20Advisor%20-%20Intelsat%207-27-2020.pdf; Intelsat License LLC Notice of *Ex Parte* Meeting (July 27, 2020), https://ecfsapi.fcc.gov/file/10727200387174/Ex%20Parte%20Meeting%20Intelsat%20Transition

the satellite in orbit ready for cutover in the event of failure, customers would face major service disruptions from outages. For this reason, the Content Companies have made clear to the Commission that they would not perceive the Distribution services they get from Intelsat to be comparable if they did not also include Restoration services that are substantially similar, or the functional equivalent, of what these customers enjoy today.[17]

The Report and Order is clear in paragraph 194 that "[w]e expect incumbents to obtain the equipment that most closely replaces their existing equipment, or as needed, provides the targeted technology upgrades necessary for clearing the lower 300 megahertz, and all relocation costs must be reasonable. 'Reasonable' relocation costs are those necessitated by the relocation in ***order to ensure that incumbent space station operators continue to be able to provide substantially the same or better service*** to incumbent earth station operations . . ." (emphasis added). This language cannot be interpreted otherwise than to allow a satellite operator to take reasonable steps and incur reasonable costs to continue the services provided before the transition, after the transition.

In short, Intelsat cannot replicate current Restoration service post-transition if it is asked to change its Transition Plan to remove the planned Galaxy 12R satellite. Intelsat would fail to meet its contractual commitments to customers and would not be in compliance with the "same or better standard" of the Report and Order. Intelsat's customers, in turn, could suffer a catastrophic loss of service - something that was a core stated objective of the Commission to avoid from the outset.

II. As Instructed by the Order, Intelsat is Applying Incremental Costs to Any Non-C-band Payloads

The C-band Report and Order defines "compensable costs" to include "any reasonable, additional costs that the incumbent space station operators . . . may incur as a result of relocation."[18] The Commission specifically contemplated that this guideline be applied consistent with the *Emerging Technologies* precedent and allowed for reimbursement of the "reasonable replacement cost for . . . newer equipment to the extent it is needed to carry out the transition" even when "this equipment necessarily may include improved functionality beyond what is necessary to clear the band."[19] The Report and Order also established that, where an incumbent satellite operator "builds additional functionalities replacement equipment that are not needed to facilitate the swift transition of the band, it must reasonably allocate the ***incremental*** costs of such additional functionalities to itself and only seek reimbursement for the costs reasonably allocated to the needed relocation."[20]

%20Plan%20-%20Intelsat%207-27-2020.pdf; *see also* SES Americom, Inc. Notice of *Ex Parte* Meeting (July 29, 2020), https://ecfsapi.fcc.gov/file/10729253010041/SES%20Americom%2C%20Inc.%20July%2029%20Ex%20Parte.pdf.

[17] *See* Content Companies *Ex Parte* Letter, 1 (July 31, 2020) ("Preserving these incumbent restoration services as part of the migration to the upper 200 MHz thus is appropriate *and* necessary to fulfill the comparability standard of the C-band Order.") (emphasis original).

[18] Report and Order, para. 193.

[19] *Id.*, para. 194.

[20] *Id.* (emphasis added).

In compliance with the Commission's instruction, Intelsat proposes, for any multi-payload satellite, not to seek reimbursement for any costs above the cost of a C-band standalone satellite. As reflected in the record, both Boeing and Maxar have assured the Commission that this type of cost allocation is familiar, longstanding and can be documented by the relevant satellite manufacturer for future review. The determination of the incremental cost for additional payloads is an established methodology and is simple:

> *Total Cost of the Spacecraft, MINUS the cost of a C-band only Spacecraft = Incremental Cost of Additional Payload*

Intelsat reviewed the comments that assert this methodology might represent some unfairness or the potential for cross-subsidy as applied to Intelsat's replacement satellites. These expressed concerns fail to comprehend the Commission's stated reliance on its *Emerging Technologies* framework that balances "the interest of new licensees seeking early entry into their respective bands in order to deploy new technologies and services with the need to minimize disruption to incumbent operations used to provide service to customers during the transition."[21] That framework recognizes the tradeoffs inherent in reallocating spectrum from current uses to other, higher value uses. The Commission seeks to minimize the loss to incumbents (and their customers) from such a reallocation, and the agency as well seeks to have incumbents incentivized to cooperate in the transition and to create value.

In the C-band transition, the Commission seeks to create even greater benefits to the public from accelerating this transition. Intelsat had the Brattle Group review both the Commission's framework and the comments on Intelsat's Transition Plan that bear on these cost allocation issues. In a white paper Intelsat will file with the Commission shortly, Senior Consultant Economist Paroma Sanyal concludes that the Commission appropriately adopted an incremental cost methodology to address the issue of additional functionality on replacement satellites and that other methods advocated for consideration by commenters would be distortive and create economic inefficiencies. This conclusion is based on several factors.

First, the overarching principle guiding the cost allocation is that multiproduct industries with economies of scope (i.e., it is cheaper to produce the two goods together rather than separately) should optimize their joint production decision. Producing the two goods separately would lead to duplication of costs, non-optimal output levels and economically inefficient outcomes. In this case, and as the Commission recognized in the Report and Order, any joint C-band and Ku-band payloads should not be prohibited, and in fact should be jointly optimized to the extent possible given the very short window to procure and launch these satellites.[22] Because of the need for relocation cost reimbursement, the Commission adopted an incremental cost allocation methodology and stated that only relocation costs associated with clearing the C-band will be reimbursed; the program will not pay for any incremental costs of added functionality such as ancillary payloads.[23]

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[21] Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Services, *Ninth Report and Order and Order*, 21 FCC Rcd. 4473, para. 11 (2006).

[22] *See Report* and Order, para. 194.

[23] The cost allocation issue arises because of the existence of common costs when two goods are produced jointly – C-Band services and Ku-Band services. While cost allocation is an important

Second, Intelsat has committed to pay the difference between the cost of a C-band and additional-band satellite and the cost of a standalone C-band satellite, as noted above.[24] This aligns with the definition of how incremental costs are calculated in Economics and Financial Accounting, where individual users are ranked in order, and the first or primary user is allocated the cost of a stand-alone user, and then the additional user is allocated the additional cost that arises from two users rather than one.[25] It ensures that there is no government or taxpayer subsidy for the ancillary payload. The white paper concludes that no other allocation methodology is required or needed, as the incremental cost approach is economically sound and ensures that there is no cross-subsidization of services and thus, no market distortion.

It is worth noting that the Commission, in adopting its incremental cost methodology, is allowing reimbursement to Intelsat of less than what it would take to replace all the existing functionality of the current Intelsat satellites that must be replaced to achieve accelerated clearing. Currently, some Intelsat satellites carry both C-band and ancillary payloads such as Ku-band payloads. Due to the mandated accelerated clearing, Intelsat has to replace these satellites, which implies that both C-band and ancillary payloads should be counted as a cost of the accelerated clearing. Nevertheless, the Commission adopted its incremental cost methodology whereby any non-C-band functionality has to be paid by the satellite operator, even if it already existed in an existing satellite.[26] Intelsat is following the Commission's stated incremental cost methodology and will pay for any ancillary payloads while the future overlay licensees will pay only for the C-band satellite standalone costs. Critically, Intelsat based its replacement satellite production decisions in reliance on that framework.

Finally, Eutelsat and others raised concerns about potential cross-subsidization – *i.e.*, the C-band reimbursement subsidizing ancillary payloads.[27] In a rate regulated context, if costs are misallocated, that could lead to cross-subsidization of other services and market distortions. However, in this case, and with the Commission specifying the use of an incremental cost methodology, there is no cross-subsidization of the ancillary payload by the C-band transition cost reimbursement. The white paper reviews economic literature on this point and concludes that the incremental cost test – even for rate regulated industries - is satisfied if the added

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issue for regulated industries, in the competitive context, prices will be market driven based on marginal costs, so they would not be affected by common fixed cost allocation issues.

[24] When replacing equipment to provide the same service, it is logical and economically efficient to replace it with the best available technology that is currently available on the market subject to a cost constraint. The Commission recognized this and will "allow reimbursement for the cost of that equipment and recognize that this equipment necessarily may include *improved functionality beyond what is necessary to clear the band*." Report and Order, para. 194. It would be a waste of public resources to replace five-year old existing equipment with equipment of the same vintage when better equipment for a similar cost is available.

[25] *See, e.g.*, Orta Doğu Teknik Üniversitesi, *Cost and Revenue Allocations*, 41 (2010), http://users.metu.edu.tr/mugan/EMBA%205412%20Cost%20and%20Revenue%20Allocation.ppt (last visited August 4, 2020).

[26] Report and Order, para. 194.

[27] *See* Comments of Eutelsat, S.A., 5-6 (May 14, 2020), https://ecfsapi.fcc.gov/file/10514307455647/Eutelsat%20Cost%20Catalog%20Comments%20(FINAL%202020-05-14).pdf.

revenue from the ancillary service/good is greater than the added (incremental) cost.[28] Of course, satellite services are not price or profit regulated businesses, so fixed cost allocations do not directly influence pricing. However, the revenues from the ancillary payloads will be sufficient to cover the incremental cost of putting the payloads on the C-band satellites. This satisfies the classic rate regulated incremental cost test of no subsidy.

It should also be apparent that on a standalone basis the C-band satellite prices will not be lower if the ancillary payloads are not included on the satellite. The C-band quantity is fixed, the market is competitive, and there is little incentive to lower prices. As the white paper concludes, the structure is subsidy free. There is nothing to be gained and much to lose by any attempt to modify the structure now. Intelsat relied on the plain meaning of the Report and Order in constructing its Transition Plan and make the economic analysis of what additional payloads should be added to the satellite based on the industry standard of incremental cost determination. If the WTB were to alter this cost allocation methodology to something different, Intelsat will need to reassess its satellite deployment plan to transition the C-band services. Putting the entire accelerated timeline in jeopardy, and by that the availability of repurposed spectrum for 5G, makes no economic or policy sense.[29]

As the Commission is well aware, it was necessary to contract for these satellites and start the construction well in advance of the Transition Plan deadline in order to meet the accelerated timelines desired by the Commission. The anticipated cost outlay and reimbursements have been factored into Intelsat's determination to file for Chapter 11 protection and for the amount of financing necessary to fund the Transition Plan until costs are reimbursed. Intelsat has relied to its potential detriment on what should be a straightforward interpretation of the Report and Order. Should the Commission determine that another interpretation other than an "incremental" cost methodology is required, Intelsat will be forced to remove the non-C-band payloads from the replacement satellites. The result will be (a) the costs for which Intelsat will seek reimbursement (the C-band only payload) would remain exactly the same; and (b) the construction will be halted, contracts modified and Intelsat will incur damages for the costs incurred to date (for which Intelsat may also seek reimbursement) and the accelerated schedule will be compromised.

III. The WTB's Legal Authority is Limited to that of the Commission's Specific Delegation.

The Report and Order plainly addresses comparability and cost allocation. The Commission vested the WTB with authority to clarify and interpret the Commission's Report and Order as part of its implementation, but the WTB must be sensitive to taking any action in reliance on comments that effectively *modifies* any aspect of the Report and Order as such action would be beyond its authority.

The authority of the WTB in these matters derives from—and is limited by—47 U.S.C. § 155(c), which allows the Commission to delegate certain of its functions when doing so is "necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business." Here, the Report and Order "delegate[s]" to the WTB "the role of providing clarifications or interpretations to eligible space station operators of the Commission's orders for

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[28] *See* Gerald R. Faulhaber, *Cross-Subsidization: Pricing in Public Enterprises*, 65 AM. ECON. REV. 966, 974 (1975).

[29] It would also send a negative signal potentially affecting future spectrum reallocations if it is plain that willing participants are not able to rely on the Commission's established guidance.

all aspects of the transition."[30] In clarifying and interpreting the Report and Order, the WTB may not ignore the plain terms of the Report and Order.[31] Nor may it "interpret" the Report and Order in a way that creates new or inconsistent regulatory requirements.[32] When a subdivision of an agency takes actions outside its formally delegated functions, such action cannot legally bind the Commission.[33] This is particularly true where the subdivision would be deciding issues new or novel questions of fact, policy, or law that cannot be resolved without resort to outstanding Commission precedents and guidelines.[34]

The Commission plainly adopted an incremental cost methodology for ensuring that satellite operators that choose to include a non-C-band payload on replacement satellites pay the incremental costs of those non-C-band payloads. Despite the musings of Eutelsat, it would be beyond the scope of the WTB's delegated authority to "interpret" the Report and Order to require a wholly *new* cost methodology that, if applied, would cause Intelsat to reconsider its entire Transition Plan.[35] The appropriate disposition of these issues remains exclusively controlled by the relevant rules that the Commission adopted in the Report and Order.

Intelsat looks forward to moving ahead with the WTB to finalize the company's Transition Plan and puts forth this legal argument simply as a preservation of rights.

IV. Conclusion

Intelsat has spent over two years reviewing how it could achieve an accelerated transition, first in repurposing 200 MHz to the Commission for auction, and then later 300 MHz out of the 500 MHz used today. It is only possible to achieve a repurposing of this magnitude in an accelerated timeframe by taking a number of complex steps simultaneously, and in good faith reliance that the Commission meant what it said when it recognized that new satellites would

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[30] 47 C.F.R. § 27.1412(h).

[31] *See Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019).

[32] *See id.* (explaining that even where an agency is entitled to deference, it may not create a *de facto* new regulation under the guise of interpreting an existing unambiguous regulation).

[33] *See Fed. Commc'ns Comm'n v. ITT World Comm'ns, Inc.*, 466 U.S. 463, 472-73 (1984) (explaining that the "Consultative Process sessions" that a Telecommunications Committee under the FCC held with foreign officials were not FCC actions because they were outside the scope of the Telecommunications Committee's "only formally delegated authority" – "consider or act upon applications for common carrier certification").

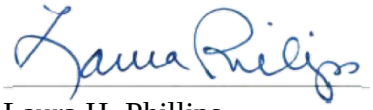
[34] *See* 47 C.F.R. § 0.331(a), (d) (restricting Bureau authority in delegated areas involving new or novel questions of fact, policy, and law); *cf. Fones4AllCorp. v. Fed. Commc'n Comm'n*, 550 F.3d 811, 819 (9th Cir. 2008) (noting that a bureau under delegated authority "may not decide issues of first impression, described as 'any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.'").

[35] *See, e.g.*, Inmarsat Inc., EchoStar Satellite Services, L.L.C., Hughes Network Systems, LLC Notice of *Ex Parte* Meeting, 3 (July 16, 2020), https://ecfsapi.fcc.gov/file/10716135314477/July%2014%20Satellite%20Operators%20C-Band%20Ex%20Parte.pdf; Comments of Satellite Operators on the Petition for Expedited Reconsideration or Clarification, 11 (June 26, 2020), https://ecfsapi.fcc.gov/file/10626864824306/Satellite%20Operators%20Comments%20on%20C-Band%20Recon%20Petition.pdf.

need to be launched and that ensured that incumbent satellite operators would be compensated for comparable facilities that are necessary to allow customers the "same or better service" with many fewer transponders.

Please contact the undersigned with any questions regarding this letter.

Respectfully submitted,



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cc: Jose Alburqueque
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